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CHAMBER ACTION

1 The State Administration Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to auditor selection procedures; amending
7 s. 218.391, F.S.; revising the auditor selection
8 procedures that local governmental entities, district
9 school boards, charter schools, and charter technical
10 career centers must use in selecting auditors to conduct
11 certain required financial audits; revising provisions
12 relating to membership, purposes, and duties of audit
13 committees required to be established to aid in such
14 selection; providing for requests for proposals; providing
15 review and ranking requirements; requiring written
16 contracts and providing requirements therefor, including
17 renewal requirements; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 218.391, Florida Statutes, is amended
22 to read:

23 218.391 Auditor selection procedures.--

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(1) Each local governmental entity, district school board, charter school, or charter technical career center, prior to entering into a written contract pursuant to subsection (7), except as provided in subsection (8), shall use auditor selection procedures when selecting an auditor to conduct the annual financial audit required in s. 218.39.

(2) The governing body of a charter county, municipality, special district, district school board, charter school, or charter technical career center shall establish an audit ~~auditor~~ selection committee and ~~auditor selection procedures or use the procedures outlined in subsection (3).~~ Each noncharter county shall establish an audit committee that, at a minimum, shall consist of each of the county officers elected pursuant to s. 1(d), Art. VIII of the State Constitution, or a designee, and one member of the board of county commissioners or its designee. The primary purpose of the audit committee ~~and the procedures~~ is to assist the governing body in selecting ~~contract with an~~ auditor to conduct the annual financial audit required in s. 218.39; however, the audit committee may serve other audit oversight purposes as determined by the entity's governing body. The public shall not be excluded from the proceedings under this section.

(3) ~~The audit governing body of a noncharter county or district school board that retains a certified public accountant shall establish an auditor selection committee shall and select an auditor according to the following procedure:~~

(a) Establish factors to use for the evaluation of audit services to be provided by a certified public accounting firm

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52 duly licensed under chapter 473 and qualified to conduct audits
53 in accordance with government auditing standards as adopted by
54 the Florida Board of Accountancy. Such factors shall include,
55 but are not limited to, ability of personnel, experience,
56 ability to furnish the required services, and such other factors
57 as may be determined by the committee to be applicable to its
58 particular requirements ~~For each noncharter county, the auditor~~
59 ~~selection committee shall consist of the county officers elected~~
60 ~~pursuant to s. 1(d), Art. VIII of the State Constitution, and~~
61 ~~one member of the board of county commissioners or its designee.~~

62 (b) ~~The committee shall~~ Publicly announce requests for
63 proposals, ~~in a uniform and consistent manner, each occasion~~
64 ~~when auditing services are required to be purchased. Public~~
65 announcements ~~notice~~ must include, at a minimum, a brief general
66 description of the audit and ~~must~~ indicate how interested firms
67 ~~certified public accountants~~ can apply for consideration.

68 (c) Provide interested ~~The committee shall encourage~~ firms
69 with a request for proposal. The request for proposal shall
70 include information on how proposals are to be evaluated and
71 such other information the committee determines is necessary for
72 the firm to prepare a proposal ~~engaged in the lawful practice of~~
73 ~~public accounting who desire to provide professional services to~~
74 ~~submit annually a statement of qualifications and performance~~
75 ~~data.~~

76 (d) ~~Any certified public accountant desiring to provide~~
77 ~~auditing services shall first be qualified pursuant to law. The~~
78 ~~committee shall make a finding that the firm or individual to be~~
79 ~~employed is fully qualified to render the required services.~~

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80 ~~Among the factors to be considered in making this finding are~~
81 ~~the capabilities, adequacy of personnel, past record, and~~
82 ~~experience of the firm or individual.~~

83 ~~(e) The committee shall adopt procedures for the~~
84 ~~evaluation of professional services, including, but not limited~~
85 ~~to, capabilities, adequacy of personnel, past record,~~
86 ~~experience, results of recent external quality control reviews,~~
87 ~~and such other factors as may be determined by the committee to~~
88 ~~be applicable to its particular requirements.~~

89 ~~(f) The public shall not be excluded from the proceedings~~
90 ~~under this subsection.~~

91 ~~(d)(g) The committee shall Evaluate proposals provided~~
92 ~~current statements of qualifications and performance data on~~
93 ~~file with the committee, together with those that may be~~
94 ~~submitted by qualified other firms regarding the proposed audit,~~
95 ~~and shall conduct discussions with, and may require public~~
96 ~~presentations by, no fewer than three firms regarding their~~
97 ~~qualifications, approach to the audit, and ability to furnish~~
98 ~~the required services. If compensation is one of the factors~~
99 ~~established pursuant to paragraph (a), it shall not be the sole~~
100 ~~or predominant factor used to evaluate proposals.~~

101 ~~(e)(h) The committee shall select Rank and recommend in~~
102 ~~order of preference no fewer than three firms deemed to be the~~
103 ~~most highly qualified to perform the required services after~~
104 ~~considering the following factors established pursuant to~~
105 ~~paragraph (a): the ability of professional personnel; past~~
106 ~~performance; willingness to meet time requirements; location;~~
107 ~~and recent, current, and projected workloads of the firms.~~

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108 ~~However, such distribution shall not violate the principle of~~
109 ~~selection of the most highly qualified firms.~~ If fewer than
110 three firms respond to the request for proposal ~~desire to~~
111 ~~perform the services,~~ the committee shall recommend such firms
112 as it deems ~~determines~~ to be the most highly qualified.

113 (4)(i) The governing body shall inquire of qualified firms
114 as to the basis of compensation, select one of the firms
115 recommended by the audit committee, and negotiate a contract,
116 using one of the following methods:

117 (a) If compensation is not one of the factors established
118 pursuant to paragraph (3)(a) and not used to evaluate firms
119 pursuant to paragraph (3)(e), the governing body shall negotiate
120 a contract with ~~The committee may request, accept, and consider~~
121 ~~proposals for the compensation to be paid only during~~
122 ~~competitive negotiations under paragraph (h).~~ the firm ranked
123 first ~~may then negotiate a contract with the board giving, among~~
124 ~~other things, a basis of its fee for that engagement.~~ If the
125 governing body ~~board~~ is unable to negotiate a satisfactory
126 contract with that firm, negotiations with that firm shall be
127 formally terminated, and the governing body ~~board~~ shall then
128 undertake negotiations with the second-ranked firm. Failing
129 accord with the second-ranked firm, negotiations shall then be
130 terminated with that firm and undertaken with the third-ranked
131 firm. Negotiations with the other ranked firms shall be
132 undertaken in the same manner. The governing body ~~board~~, in
133 negotiating with firms, may reopen formal negotiations with any
134 one of the three top-ranked firms, but it may not negotiate with
135 more than one firm at a time. ~~The board shall also negotiate on~~

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~~the scope and quality of services. In making such determination, the board shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. For contracts over \$50,000, the board shall require the firm receiving the award to execute a truth-in-negotiations certificate stating that the rates of compensation and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Such certificate shall also contain a description and disclosure of any understanding that places a limit on current or future years' audit contract fees, including any arrangements under which fixed limits on fees will not be subject to reconsideration if unexpected accounting or auditing issues are encountered. Such certificate shall also contain a description of any services rendered by the certified public accountant or firm of certified public accountants at rates or terms that are not customary. Any auditing service contract under which such a certificate is required must contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the board determines the contract price was increased due to inaccurate or incomplete factual unit costs. All such contract adjustments shall be made within 1 year following the end of the contract.~~

(b) If compensation is one of the factors established pursuant to paragraph (3)(a) and used in the evaluation of proposals pursuant to paragraph (3)(d), the governing body shall select the highest-ranked qualified firm or must document in its

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164 public records the reason for not selecting the highest-ranked
165 qualified firm.

166 (c) The governing body may select a firm recommended by
167 the audit committee and negotiate a contract with one of the
168 recommended firms using an appropriate alternative negotiation
169 method for which compensation is not the sole or predominant
170 factor used to select the firm.

171 (d) In negotiations with firms under this section, the
172 governing body may allow a designee to conduct negotiations on
173 its behalf.

174 (5) The method used by the governing body to select a firm
175 recommended by the audit committee and negotiate a contract with
176 such firm must ensure that the agreed-upon compensation is
177 reasonable to satisfy the requirements of s. 218.39 and the
178 needs of the governing body.

179 (6)(j) ~~If the governing body board~~ is unable to negotiate
180 a satisfactory contract with any of the recommended ~~selected~~
181 firms, the committee shall recommend ~~select~~ additional firms,
182 and negotiations ~~the board~~ shall continue ~~negotiations~~ in
183 accordance with this section ~~subsection~~ until an agreement is
184 reached.

185 (7) Every procurement of audit services shall be evidenced
186 by a written contract embodying all provisions and conditions of
187 the procurement of such services. For purposes of this section,
188 an engagement letter signed and executed by both parties shall
189 constitute a written contract. The written contract shall, at a
190 minimum, include the following:

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191 (a) A provision specifying the services to be provided and
192 fees or other compensation for such services.

193 (b) A provision requiring that invoices for fees or other
194 compensation be submitted in sufficient detail to demonstrate
195 compliance with the terms of the contract.

196 (c) A provision specifying the contract period, including
197 renewals, and conditions under which the contract may be
198 terminated or renewed.

199 (8) Written contracts entered into pursuant to subsection
200 (7) may be renewed. Such renewals may be done without the use of
201 the auditor selection procedures provided in this section.
202 Renewal of a contract shall be in writing.

203 Section 2. This act shall take effect July 1, 2005.